

BAY COUNTY APPORTIONMENT COMMISSION

JULY 13, 2001

THE BAY COUNTY APPORTIONMENT COMMISSION MET ON FRIDAY, JULY 13, 2001, IN THE FOURTH FLOOR COMMISSION CHAMBERS OF THE BAY COUNTY BUILDING. THE MEETING WAS CALLED TO ORDER BY CHAIRMAN JOSEPH K. SHEERAN AT 9:00 A.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT.

ROLL CALL: PROSECUTING ATTORNEY JOSEPH K. SHEERAN, CHAIRMAN
COUNTY CLERK LINDA L. TOBER, SECRETARY
DEMOCRATIC PARTY CHAIRMAN TONY PAWELSKI
REPUBLICAN PARTY CHAIRMAN MAX D. HOLMAN

EXCUSED: TREASURER JEANETTE E. NEITZEL

ALSO PRESENT: LORAINA A. URBANCIK, SECRETARY TO THE COUNTY CLERK
MARTHA P. FITZHUGH, CORPORATION COUNSEL
NEWS MEDIA

APPEAL OF APPORTIONMENT PLAN

CHAIRMAN SHEERAN ANNOUNCED THAT AN APPEAL OF THE APPORTIONMENT PLAN HAD BEEN FILED WITH THE MICHIGAN COURT OF APPEALS. THE COUNTY CLERK POINTED OUT THAT EXHIBIT 8 APPEARED TO BE MISSING A PAGE IN THE EXPLANATION OF THE ONE-PERSON/ONE-VOTE PLAN, AND THAT EXHIBIT 4 APPEARED TO BE MISSING TWO PAGES OF MEETING MINUTES. ALSO, THE COUNTY CLERK REPORTED THAT SHE RECEIVED THE PETITION VIA PRIORITY MAIL WITH A DETROIT POSTMARK AND NO CASE NUMBER. CORPORATION COUNSEL REPORTED THAT THE COURT OF APPEALS STATED THAT THE PETITION HAD BEEN FILED FRIDAY, JULY 6, 2001, AND HAD BEEN GIVEN CASE NO. 235313. THE COUNTY CLERK ALSO POINTED OUT THAT THE PROOF OF SERVICE HAD NOT BEEN SIGNED BY ANYONE AND THAT JOE SHEERAN HAD NOT RECEIVED THE PETITION.

PUBLIC INPUT

CHAIRMAN SHEERAN OFFERED TO ACCEPT COMMENTS OF MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD WITH THEIR CONCERNS. THERE WERE NO MEMBERS OF THE PUBLIC PRESENT.

APPEAL

THE COUNTY CLERK POINTED OUT THE IMPORTANCE OF OBTAINING THE MISSING PAGE IN EXHIBIT 8. SHE ALSO WONDERED ABOUT THE POSSIBILITY OF FILING A MOTION TO DISMISS BASED ON LACK OF MERIT. CORPORATION COUNSEL RESPONDED THAT THE ANSWER WAS DUE 21 DAYS AFTER FILING OF THE PETITION, WHICH IS FRIDAY, JULY 27, 2001, AND THAT DEFENSE STRATEGY WOULD BE DISCUSSED AT LENGTH WITH THE ATTORNEY HIRED TO DEFEND THIS PETITION.

CHAIRMAN SHEERAN INTERRUPTED TO POINT OUT THAT THE BOARD MIGHT HAVE THE RIGHT TO GO INTO CLOSED SESSION TO DISCUSS THIS PENDING LITIGATION. BOARD MEMBERS WERE IN AGREEMENT THAT A CLOSED SESSION WAS NOT NECESSARY.

CORPORATION COUNSEL PLANNED TO HIRE AN ATTORNEY WITH EXTENSIVE LITIGATION EXPERIENCE AND WITH EXPERTISE IN THE AREA OF APPORTIONMENT COMMISSIONS.

CORPORATION COUNSEL ALSO MADE THE COMMENT THAT IT IS NOW THE OBLIGATION OF EACH MEMBER OF THE COMMISSION TO DEFEND THE APPORTIONMENT PLAN WHICH WAS ADOPTED. THE CHAIRMAN QUESTIONED THIS STATEMENT. MS. FITZHUGH WENT ON TO EXPLAIN THAT THE APPORTIONMENT COMMISSION AS A WHOLE WOULD BE REQUIRED TO DEFEND THE PLAN. IN PARTICULAR, SHE REFERRED TO THE THREE ELECTED OFFICIALS AND REVIEWED CASE LAW SHOWING THAT A QUO WARRANTO ACTION COULD BE FILED AGAINST A PUBLIC OFFICIAL IF HE OR SHE FAILED TO DEFEND ACTIONS TAKEN BY THE PUBLIC BODY.

MS. FITZHUGH DISCUSSED HER ROLE AS ATTORNEY FOR THE COMMISSION, WHICH INCLUDED CONTRACTUALLY HIRING AN ATTORNEY WITH EXPERIENCE TO DEFEND THE APPORTIONMENT PLAN. MS. FITZHUGH EXPLAINED THAT SHE WAS NOT INTENDING TO HIRE MILLER, CANFIELD, ET. AL., IN PART FOR THE REASON THAT THE BILL FOR THE PREVIOUS OPINION ISSUED BY THE ATTORNEY FROM THAT LAW FIRM WAS \$5,867.00, WHICH WAS VERY EXPENSIVE.

MR. HOLMAN HAD CONTACTED ATTORNEY ERIC E. DOSTER OF FOSTER, SWIFT, COLLINS & SWIFT, P.C., IN LANSING, MICHIGAN. MR. DOSTER SENT A LETTER REVIEWING HIS EXPERIENCE WITH APPORTIONMENT PLANS, REPRESENTING COUNTY APPORTIONMENT COMMISSIONS OR PETITIONERS, AND ESTIMATING THAT HE COULD DEFEND BAY COUNTY FOR APPROXIMATELY \$1,500. MR. HOLMAN SUBMITTED THIS LETTER FOR THE APPORTIONMENT COMMISSION'S REVIEW AND SUGGESTED THAT CORPORATION COUNSEL CONTACT MR. DOSTER FOR FURTHER INFORMATION. MS. FITZHUGH QUESTIONED THE FACT THAT MR. DOSTER SOMETIMES REPRESENTED THE COUNTY AND SOMETIMES REPRESENTED THE PETITIONER.

THE QUESTION WAS RAISED WHETHER MS. FITZHUGH WAS TO HIRE COUNSEL OR WHETHER THAT WAS TO BE DONE BY MOTION OF THE APPORTIONMENT COMMISSION. MR. HOLMAN HAD BEEN TOLD IT COULD BE EITHER WAY. CHAIRMAN SHEERAN STATED THAT HIS REVIEW OF THE LAW INDICATED THAT MS. FITZHUGH HAD AUTHORITY TO HIRE OUTSIDE HELP IF SHE DEEMED IT NECESSARY.

FURTHER DISCUSSION FOLLOWED AS TO MS. FITZHUGH'S ROLE IN HIRING AN ATTORNEY, AND IT WAS STATED THAT IT WAS PART OF HER DUTIES AS CORPORATION COUNSEL TO CONTRACT WHERE NECESSARY, NOTING THAT THE OFFICE OF CORPORATION COUNSEL AT ONE TIME EMPLOYED TWO ATTORNEYS, INSTEAD OF JUST ONE. MR. HOLMAN POINTED OUT THAT MS. FITZHUGH IS EMPLOYED BY THE COUNTY EXECUTIVE WHO HAS OPENLY STATED HIS OPPOSITION TO THE APPORTIONMENT PLAN. MS. FITZHUGH ASSURED THE COMMISSION THAT SHE WOULD ACT WITH INTEGRITY IN PERFORMING HER DUTIES, ACKNOWLEDGING THAT SHE COULD NOT MINIMIZE THE POLITICAL PRESSURE INVOLVED IN THIS MATTER.

IN REGARD TO THE MISSING PAGES, IT WAS STATED THAT IT WAS STILL NOT KNOWN WHETHER THE ORIGINAL FILED WITH THE COURT OF APPEALS WAS MISSING PAGES. THE COURT MIGHT GIVE THE PETITIONER A CERTAIN AMOUNT OF TIME TO SUBMIT A COMPLETE PETITION OR MIGHT MAKE A RULING BASED UPON WHAT WAS SUBMITTED. CORPORATION COUNSEL NOTED THAT IT COULD BE ADVANTAGEOUS TO THE DEFENSE OF THE PETITION THAT PAGES WERE MISSING, AND SHE SUGGESTED THAT THE COMMISSION LET THAT MATTER STAND AS IT IS AND ALLOW HIRED COUNSEL TO ADDRESS THE MATTER IN CONJUNCTION WITH DEFENSE STRATEGY. SHE ALSO REQUESTED THE ORIGINAL FROM THE COUNTY CLERK, RATHER THAN THE PHOTOCOPY.

OTHER THAN THE DUE DATE FOR AN ANSWER, THE TIME INVOLVED IN SETTLING THIS PETITION WAS NOT KNOWN, BUT BOTH CORPORATION COUNSEL AND THE PROSECUTOR AGREED THAT THE COURT OF APPEALS WOULD LIKELY GIVE PRIORITY TO THESE CASES, DUE TO THE IMPORTANCE OF APPORTIONMENT PLANS.

NEXT MEETING

CORPORATION COUNSEL SUGGESTED SCHEDULING A STATUS REPORT MEETING IN ONE MONTH. MR. HOLMAN PREFERRED TO BE ON TOP OF THE MATTER AND ABLE TO PROVIDE INPUT, RATHER THAN OCCASIONALLY GETTING STATUS REPORTS. HE SUGGESTED MEETING AGAIN NEXT WEEK. CORPORATION COUNSEL AND THE CHAIRMAN WERE UNAVAILABLE FOR A MEETING NEXT WEEK. THE CHAIRMAN SCHEDULED THE NEXT MEETING FOR TUESDAY, JULY 24, 2001, AT 10:00 A.M.

RECESS/ADJOURNMENT

MR. PAWELSKI MOVED TO ADJOURN THE MEETING. IT WAS SUPPORTED BY MR. HOLMAN AND PASSED BY VOICE VOTE, 4 YEAS, 0 NAYS, 1 EXCUSED - NEITZEL. THE MEETING CONCLUDED AT 9:35 A.M.

JOSEPH K. SHEERAN, PROSECUTOR
CHAIRMAN

LINDA L. TOBER, COUNTY CLERK
SECRETARY

JEANETTE E. NEITZEL, TREASURER
MEMBER

TONY PAWELSKI
DEMOCRATIC PARTY CHAIRMAN
MEMBER

MAX D. HOLMAN
REPUBLIC PARTY CHAIRMAN
MEMBER